

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**EUROMOTORS OF OAKLAND, INC. D/B/A
MERCEDES BENZ OF OAKLAND**

Employer

and

Case 32-RD-226668

ROBERT NOLAN

Petitioner

and

**EAST BAY AUTOMOTIVE COUNCIL, EAST
BAY AUTOMOTIVE MACHINISTS LODGE NO.
1546 (AFFILIATED WITH MACHINISTS
AUTOMOTIVE TRADES DISTRICT LODGE NO.
190 OF NORTHERN CALIFORNIA), AND
TEAMSTERS LOCAL NO. 853**

Union

**REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION**

Upon a petition filed on August 31, 2018,¹ under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board on September 13. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

The Petitioner seeks to decertify the Union as the collective-bargaining representative of employees in a unit at the Employer's facility in Oakland, California. The collective-bargaining agreement currently in effect (the Agreement) describes the parties to the Agreement as follows:

THIS AGREEMENT is made and entered into this 11 day of November 2015 by and between EUROMOTORS OF OAKLAND, INC. d/b/a MERCEDES-BENZ OF OAKLAND, hereinafter called EMPLOYER, and the EAST BAY AUTOMOTIVE

¹ All dates refer to 2018, unless otherwise specified.

COUNCIL, and the following Local Unions affiliated with said Council, EAST BAY AUTOMOTIVE MACHINISTS LODGE NO. 1546 (affiliated with Machinists Automotive Trades District Lodge No. 190 of Northern California, a party to this agreement) and TEAMSTERS LOCAL NO. 853, hereinafter collectively called UNION.²

The petitioned-for unit description is as follows:

All full-time and regular part-time service technicians, shop foremen, service advisors, parts advisors, lead stockroom clerks, parts stockroom clerks-drivers, detailers, utility persons, car washers/porters employed by the Employer at its facility located at 2915 Broadway, Oakland, California; excluding confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

At the hearing, the Petitioner, the Employer, East Bay Automotive Machinists Lodge No. 1546 (Machinists Lodge No. 1546), and Teamsters Local No. 853 entered their appearances on the record. East Bay Automotive Council (EBAC) and Machinists Automotive Trades District Lodge No. 190 of Northern California (District Lodge 190) did not.

The Employer did not raise any issues with respect to the petition. The parties entered into a stipulation as to commerce only.³ Machinists Lodge No. 1546 and Teamsters Local No. 853 refused to take a position as to whether they, or any of the entities referred to as “the Union” in the Agreement, are labor organizations under the Act. Machinists Lodge No. 1546 and Teamsters Local No. 853 also refused to take a position as to the appropriateness of the petitioned-for unit but rather proffered two alternative arguments: (1) there is only one bargaining unit and the petition should be dismissed based on inadequate service to EBAC and District Lodge 190; or, (2) there are two separate bargaining units, one comprised of members of Machinists Lodge No. 1546, and another comprised of the members of Teamsters Local No. 853, in which case the petition, as filed, is inappropriate and should be dismissed. Additionally, Machinists Lodge No. 1546 and Teamsters Local No. 853 took the position that the Agreement constitutes a bar to the petition.

As explained below in more detail, I have duly considered the record and have determined that all parties collectively named as the “Union” in the Agreement are labor organizations under the Act, and joint representatives of a single unit of employees. Additionally, I find that service of the petition by the Petitioner was adequate, and that no contract bar to the petition exists. Furthermore, I find the petitioned-for unit to be coextensive with the existing bargaining unit and I am directing an election therein.

² The caption of the case has been corrected to reflect the complete name of the recognized Union in this matter as it appears in the Agreement.

³ Euromotors of Oakland, Inc. d/b/a Mercedes-Benz of Oakland, a California Corporation, with an office and place of business in Oakland, California, is engaged in the business of selling and servicing automobiles. During the past twelve months, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Oakland, California facility products, goods and materials valued in excess of \$5,000 directly from points outside of the State of California.

Labor Organization Status

Section 2(5) of the Act provides:

The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Agreement’s recognition clause states that “[t]he Employer hereby recognizes the Union as the sole, exclusive bargaining representative of all employees of the Employer in the classifications of work or in the jurisdiction of the Union as hereinafter described in this agreement.” The Agreement sets forth the current rates of pay and numerous other terms and conditions of employment enjoyed by bargaining unit employees.

Aside from the Agreement itself, multiple documents in the record provide unequivocal evidence that each of the entities that constitute the Union is a labor organization under the Act. For example, a letter from Machinists Local⁴ 1546 (Union Exhibit 1), dated August 20, provided official notice of the opening of the Agreement for negotiations and cited “ARTICLE XXII” of the Master Agreement, thereby establishing the intention to negotiate terms and conditions of employment of unit employees. The letter is signed by a representative of District Lodge 190 on behalf of Machinists Local 1546.

Business Representative Steve Older identified himself on the record as a business representative of Machinists Local 1546 who has been dealing with the Employer, including negotiating the terms of the Agreement, and filing and processing grievances. He is identified as the “Area Director” in two letters from Machinists Local 1546 to the Employer, each dated August 31, informing the Employer that Representative Older has filed a grievance regarding the Employer’s failure to send newly hired employees to sign up with the Union (Employer Exhibit 2), and another grievance involving the discipline of shop steward Daniel Luna (Employer Exhibit 3).

A letter from Teamsters Local No. 853 to the Employer (Union Exhibit 2), dated February 1, 2011, provided notice of Teamsters Local No. 853’s desire to reopen the predecessor collective-bargaining agreement. Business Representative Philip Ybarrolaza testified that he is a business representative Teamsters Local No. 853 and is assigned to service the Agreement. He also testified that Teamsters Local No. 853 has approximately 11,000 members who are employed at companies primarily in California, and that the Union represents these employees dealing with their employers with respect to terms and conditions of employment. This representation includes the handling of grievances related to their working conditions, and for purposes of establishing wages, rates of pay, and hours of employment. Representative

⁴ Machinists interchangeably appear to refer to themselves as “Lodge” 1546 and/or “Local” 1546.

Ybarrolaza testified that he has filed “hundreds and hundreds” of grievances “as a Teamster,” and that during his tenure with Teamsters Local No. 853 he estimated that he has filed about 100 hundred grievances.

I take administrative notice of the Board’s decisions in *Anthony Motor Company, Inc. D/B/A Honda Of Hayward*, 314 NLRB 443 (1994), and *Broadway Volkswagen*, 342 NLRB 1244, 1246 (2004), in which the Board found East Bay Automotive Council, consisting of Machinists, Automotive Trades District Lodge 190, Local Lodge 1546, International Association of Machinists And Aerospace Workers, AFL-CIO to be a labor organization within the meaning of Section 2(5) of the Act.

In light of the above, I find that Machinist Lodge No. 1546, Teamsters Local No. 853, EBAC, and District Lodge 190, individually and jointly, are each labor organizations within the meaning of Section 2(5) of the Act.

Joint Representative Status

The Agreement’s recognition language is clear and establishes the labor organizations that jointly represent the unit employees of the Employer. In their argument to defeat this decertification petition, Machinists Lodge No. 1546 and Teamsters Local No. 853 assert that each represents its own members separately, including by filing grievances on behalf of their own members only, and by negotiating the terms and conditions of employment of their own members only at the bargaining table. As such, they contend that they are not joint representatives but separate parties representing separate bargaining units. Contrary to these assertions, the Board has taken the position that distinctions like those raised by Machinists Lodge No. 1546 and Teamsters Local No. 853 do not defeat the joint representative status of labor organizations engaged in multi-union bargaining. As stated by the Board in *International Paper*, 325 NLRB 689 (1998):

“[T]he Board has found joint representative status where, as here, the locals have different constitutions and bylaws; different officials who are selected by members of each local; different wage rates; different policies concerning grievances; and each local represents different jurisdictions. [Mead Foods, Inc., 146 NLRB 1515, 1517 \(1964\)](#); [Swiff & Co., 115 NLRB 752, 754 \(1956\)](#). ‘Even if there is to be an administrative division of employees among the Petitioners for the purposes of servicing the employees under a contract negotiated with the Employer, such an arrangement is not necessarily inconsistent with the concept of joint representation.’ [Utility Services, 158 NLRB 592, 593 \(1966\)](#).”

Here, I find Machinists Lodge No. 1546’s and Teamsters Local No. 853’s arguments to be unavailing. In sum, I find that the labor organizations named in the Agreement as parties to the Agreement and referred to collectively as “Union” in the Agreement, are the joint representative of the Employer’s unit employees.

Appropriateness of Service

Along with the petition, the Petitioner filed a certificate of service identifying service of the petition to the Union as follows:

Steve Older
10260 MacArthur Blvd.
Oakland, California

Receptionist
7750 Pardee Lane
Oakland, CA 94621

At the hearing, Machinists Lodge No. 1546 admitted service to Representative Older, and Teamsters Local No. 853 admitted to service to Representative Ybarrolaza. As stated earlier, neither EBAC nor District Lodge No. 190 entered appearances on the record. Counsel for Machinists Lodge No. 1546 and Teamsters Local No. 853 stated on the record that Counsel's office has represented EBAC in the past but was not representing it at the hearing. Despite the denial that Counsel represented EBAC, Counsel claimed, ostensibly on behalf of EBAC, that the petition should be dismissed because EBAC was not properly served.

I note that regional office records reflect that in *Broadway Volkswagen* 342 NLRB 1244, 1246 (2004), and other more recent matters, the Region has served all pertinent documents to Machinists Local Lodge No. 1546 and District Lodge 190 at the same address, 10260 MacArthur Blvd., Oakland, California, without any complaint from any party that service had not been received or that it had been misdirected.

The signature page of the Agreement includes three signature lines for the Union: one for EBAC, one for District Lodge 190 "on behalf of" Machinists Local 1546, and a third for Teamsters Local No. 853. Teamsters Representative Steve Older signed twice, once on behalf of EBAC and again for District Lodge 190 "on behalf of" Machinists Local 1546. The Agreement, therefore, itself shows that, at least on occasion, one representative has acted on behalf of other entities in its dealings with the Employer.

More significantly, having already found that the aforementioned labor organizations are joint representatives, consistent with established Board precedent; I find that service on one entity constitutes service on the others. *Laborers (The Associated General Contractors)*, 243 NLRB 405, fn.1 (1979). Thus, inasmuch as Teamsters Local No. 853 and Machinists Lodge No. 1546 admit to being timely served in these proceedings, EBAC and District Lodge 190 were thereby timely served as well.

The Contract Bar Issue

Based solely on the following language of the Agreement, Machinists Lodge No. 1546 and Teamsters Local No. 853 take the position that because Teamsters Local No. 853 did not reopen the contract, it was automatically renewed as of October 31, constituting a contract bar to the petition:

ARTICLE XXII. EFFECTIVE AND ANNIVERSARY DATE

This Agreement shall be in full force and effect for a period of time commencing on November 11, 2015 and ending on October 31, 2018. From and after October 31, 2018, this Agreement shall continue for yearly terms commencing with said date unless either of the parties gives to the other a sixty (60) day notice in writing immediately prior to said termination date and each anniversary date thereafter, expressing the desire of said party to terminate or revise and amend said Agreement.

As reflected above, Article XXII of the Agreement set its effective dates as November 11, 2015 to October 31, 2018. As noted earlier, Machinists Lodge No. 1546, acting for the joint Union representative, timely opened the contract on August 20. Thus, the automatic renewal provision of Article XXII, which operates in the event that neither party opens the Agreement prior to October 31, is immaterial here because automatic renewal was forestalled by way of the Union's August 20 letter opening the Agreement for negotiations. In addition, even assuming the absence of the August 20 letter, there would be no contract bar because the petition was timely filed prior to the beginning of the insulated period. Board precedent explicitly provides employees with an opportunity to file a petition during the open 60- to 90-day period prior to the expiration of a contract, including a contract containing an automatic renewal clause. *ALJUD Licensed Home Care Services*, 345 NLRB 1089 (2005); *Crompton Co.*, 260 NLRB 417 (1982). The instant petition was timely filed during the August 3 to September 1 window period to file petitions based on the Agreement's expiration date.

Furthermore, Machinists Lodge No. 1546's and Teamsters Local No. 853's contract bar argument would require me not only to accept their position that there is no joint representative, which I have already rejected, but to view the Agreement as not having a fixed term. In this regard, I note that a contract which has no fixed term does not bar an election for any period. *Pacific Coast Assn. of Pulp & Paper Mfrs.*, 121 NLRB 990, 993 (1958); *McLean County Roofing*, 290 NLRB 685, 686 fn. 5 (1988).

Therefore, I find the petition served upon the parties on August 31 to have been timely filed, and that the Agreement does not bar the instant petition.

The Appropriate Unit

The Employer agrees with the Petitioner regarding the appropriateness of the petitioned-for unit. Machinists Lodge No. 1546 and Teamsters Local No. 853 did not take a position with respect to the appropriateness of the bargaining unit but instead argued that, “[e]ither it’s one overall unit in which the East Bay Automotive Council is the union of record, or it is two separate units in which case a petition filed by a member of the bargaining unit for Machinists is insufficient to call a question of representation in a unit of Teamsters.” Additionally, Counsel for Machinists Lodge No. 1546 and Teamsters Local No. 853 appeared to argue that any of the joint representatives in this matter would be entitled to withdraw from multi-union bargaining, just as an employer may withdraw from multi-employer bargaining, presumably in support of its argument that Machinists Lodge No. 1546 and Teamsters Local No. 853 represent their own separate bargaining units.

I find these arguments to be unpersuasive and the language of the contract to be unambiguous regarding the existence of only one bargaining unit. Moreover, I note that although it is conceivable that any of the joint representatives could withdraw from multi-union bargaining, any such withdrawal would necessitate notice of that party’s intent to withdraw prior to the commencement of bargaining for a successor agreement. No record of such withdrawal was presented at hearing. Moreover, that theoretical withdrawal would only be effective after the expiration of the Agreement, and thus, would not serve to change the composition of the bargaining unit at the time this petition was filed.

It is well-settled that in a decertification election the bargaining unit in which the election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *WT Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); *Mo’s West*, 283 NLRB 130 (1987). No party at the hearing challenged the appropriateness of any specific classification listed on the petition. Having reviewed the record, I find that the unit sought by the Petitioner is coextensive with the contractually recognized unit. The evidence elicited at the hearing established that there have been no additions, deletions, or any other changes to the composition of the bargaining unit since the Agreement was signed. As such, I am ordering an election to be conducted in the following unit:

All full-time and regular part-time service technicians, shop foremen, service advisors, parts advisors, lead stockroom clerks, parts stockroom clerks-drivers, detailers, utility persons, car washers/porters employed by the Employer at its facility located at 2915 Broadway, Oakland, California; excluding confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by EAST BAY AUTOMOTIVE COUNCIL, EAST BAY AUTOMOTIVE MACHINISTS LODGE NO. 1546 (AFFILIATED WITH MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA), AND TEAMSTERS LOCAL NO. 853.

A. Election Details

The election will be held on October 30, 2018, from 10:30 a.m. to 11:30 a.m., at the break room in the sales area.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 15**, for the Parts Department and Service Advisors Parts Department and Service Advisors; and, for all other employees, **October 7**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **October 16, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Oakland, California this 12th day of October 2018.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street Suite 300N
Oakland, CA 94612-5224